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Whereas the rights acquired by the neutral or pacific powers with regard to Venezuela remain in the future absolutely intact and guaranteed by respective international arrangements;

Whereas in virtue of Article V of the protocols of May 7, 1903, signed at Washington, the tribunal "shall also decide, subject to the general provisions laid down in Article LVII of the international convention of July 29, 1899, how, when, and by whom the costs of this arbitration shall be paid;"

For these reasons, the Tribunal of Arbitration decides and pronounces unanimously that:

1. Germany, Great Britain, and Italy have a right to preferential treatment for the payment of their claims against Venezuela;

2. Venezuela having consented to put aside 30 per cent of the revenues of the customs of La Guayra and Puerto Cabello for the payment of the claims of all nations against Venezuela, the three above-named powers have a right to preference in the payment of their claims by means of these 30 per cent of the receipts of the two Venezuelan ports above mentioned.

3. Each party to the litigation shall bear its own costs and an equal share of the costs of the tribunal.

The Government of the United States of America is charged with seeing to the execution of this latter clause within a term of three months.

Done at The Hague, in the Permanent Court of Arbitration, February 22, 1904.

(Signed)	N. MOURAWIEFF.
(Signed)	H. LAMMASCH.
(Signed)	MARTENS.

GREAT BRITAIN, FRANCE, AND GERMANY V. JAPAN

*Protocol*¹

[Signed at Tokyo, August 28, 1902.]

Whereas, a dispute has arisen between the Government of Japan on the one side and the Governments of Great Britain, France, and Germany on the other, respecting the true intent and meaning of the following

¹ Similar protocols were likewise concluded between and signed by France, Germany, and Japan.

provisions of the treaties and other engagements respectively existing between them, that is to say:

Paragraph 4, Article XVIII, of the treaty of commerce and navigation of April 4, 1896, between Japan and Germany: "Sobald diese Einverleibung erfolgt" [that is to say, when the several foreign settlements in Japan shall have been incorporated with the respective Japanese communes], "sollen die bestehenden, zeitlich unbegrenzten Ueberlassungsverträge, unter welchen jetzt in den gedachten Niederlassungen Grundstücke besessen werden, bestätigt und hinsichtlich dieser Grundstücke sollen keine Bedingungen irgend einer anderen Art auferlegt werden, als sie in den bestehenden Ueberlassungsverträgen enthalten sind;" and § 3 of the complementary communication of the same date from the German Secretary for Foreign Affairs to the Japanese Minister at Berlin: "3. dass, da das Eigenthum an den im Artikel XVIII des Vertrages erwähnten Niederlassungsgrundstücken dem Japanischen Staate verbleibt, die Besitzer oder deren Rechtsnachfolger für ihre Grundstücke ausser dem kontraktmässigen Grundzins Abgaben oder Steuern irgend welcher Art nicht zu entrichten haben werden;" and the clause in the reply of the Japanese Minister of the same date, to the foregoing communication: "Dass die darin unter Nummer 1 bis 4 zum Ausdruck gebrachten Voraussetzungen, welche den Erwerb dinglicher Rechte an Grundstücken, die Errichtung von Waarenhäusern, die Steuerfreiheit der Grundstücke in den Fremdenniederlassungen und die Erhaltung wohlervorbener Rechte nach Ablauf des Vertrages zum Gegenstande haben, in allen Punkten zutreffend sind;"

Paragraph 4, Article XXI, of the revised treaty of August 4, 1896, between Japan and France: "Lorsque les changements cidessus indiqués auront été effectués" [that is to say, when the several foreign settlements in Japan shall have been incorporated with the respective Japanese communes and made a part of the municipal system of Japan; and when the competent Japanese authorities shall have assumed all municipal obligations and duties, and the municipal funds and property belonging to such settlements shall have been transferred to said Japanese authorities], "les baux à perpétuité en vertu desquels les étrangers possèdent actuellement des propriétés dans les quartiers seront confirmés, et les propriétés de cette nature ne donneront lieu à aucuns impôts, taxes, charges, contributions ou conditions quelconques autres que ceux expressément stipulés dans les baux en question;" and

Paragraph 4, Article XVIII, of the revised treaty of July 16, 1894,

between Japan and Great Britain: "When such incorporation takes place" [that is to say, when the several foreign settlements in Japan shall have been incorporated with the respective Japanese communes], "existing leases in perpetuity under which property is now held in the said settlements shall be confirmed, and no conditions whatsoever other than those contained in such existing leases shall be imposed in respect of such property;" and

Whereas, the controversy is not amenable to ordinary diplomatic methods; and

Whereas, the Powers at variance, co-signatories of the convention of The Hague for the peaceful adjustment of international differences, have resolved to terminate the controversy by referring the question at issue to impartial arbitration in accordance with the provisions of said convention;

The said Powers have, with a view to carry out that resolution, authorized the following representatives, that is to say:

The Government of Great Britain: Sir Claude Maxwell MacDonald, G. C. M. G., K. C. B., His Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary;

The Government of France: Monsieur G. Dubail, Minister Plenipotentiary, Chargé d'Affaires of France;

The Government of Germany: Count von Arco Valley, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the German Emperor, King of Prussia;

The Government of Japan: Baron Komura Jutaro, His Imperial Japanese Majesty's Minister of State for Foreign Affairs;

to conclude the following protocol:

I. The Powers in difference agree that the Arbitral Tribunal, to which the question at issue is to be submitted for final decision, shall be composed of three members who are members of the Permanent Court of Arbitration of The Hague, to be selected in the following manner:

Each party, as soon as possible and not later than two months after the date of this protocol, to name one arbitrator, and the two arbitrators so named together to choose an umpire. In case the two arbitrators fail for the period of two months after their appointment to choose an umpire, His Majesty the King of Sweden and Norway shall be requested to name an umpire.

II. The question at issue upon which the parties to this arbitration request the Arbitral Tribunal to pronounce a final decision is as follows:

Whether or not the provisions of the treaties and other engagements above quoted exempt only land held under leases in perpetuity granted by or on behalf of the Japanese Government, or land and buildings of whatever description constructed or which may hereafter be constructed on such land, from any imposts, taxes, charges, contributions, or conditions whatsoever, other than those expressly stipulated in the leases in question.

III. Within eight months after the date of this protocol, each party shall deliver to the several members of the Arbitral Tribunal and to the other party complete written or printed copies of the case, evidence and arguments upon which it relies in the present arbitration. And not later than six months thereafter a similar delivery shall be made of written or printed copies of the counter-cases, additional evidence, and final arguments of the two parties; it being understood that such counter-cases, additional evidence, and final arguments shall be limited to answering the principal cases, evidence, and arguments previously delivered.

IV. Each party shall have the right to submit to the Arbitral Tribunal as evidence in the case all such documents, records, official correspondences, and other official or public statements or acts bearing on the subject of this arbitration as it may consider necessary. But if in its case, counter-case, or arguments submitted to the tribunal either party shall have specified or alluded to any document or paper in its own exclusive possession without annexing a copy such party shall be bound, if the other party thinks proper to apply for it, to furnish that party with a copy thereof within thirty days after such application is made.

V. Either party may, if it thinks fit, but subject to the right of reply on the part of the other party within such time as may be fixed by the Arbitral Tribunal, present to the tribunal for such action as the tribunal may deem proper a statement of objections to the counter-case, additional evidence, and final arguments of the other party if it is of opinion that those documents or any of them are irrelevant, erroneous, or not strictly limited to answering its principal case, evidence, and arguments.

VI. No papers or communications other than those contemplated by Sections III and V of this protocol, either written or oral, shall be admitted or considered in the present arbitration unless the Arbitral Tribunal shall request from either party additional or supplementary explanation or information to be given in writing. If the explanation or information is given, the other party shall have the right to present a written reply within such time as may be fixed by the Arbitral Tribunal.

VII. The tribunal shall meet at a place to be designated later by the parties as soon as practicable, but not earlier than two months nor later than three months after the delivery of the counter-cases as provided in Section III of this protocol, and shall proceed impartially and carefully to examine and decide the question at issue. The decision of the tribunal shall, if possible, be pronounced within one month after the president thereof shall have declared the arbitral hearing closed.

VIII. For the purposes of this arbitration, the Government of Japan shall be regarded as one party and the Governments of Great Britain, France, and Germany, jointly, shall be regarded as the other party.

IX. So far as is not otherwise provided in this protocol, the provisions of the convention of The Hague for the peaceful adjustment of international differences shall apply to this arbitration.

Done at Tokyo, this 28th day of August, 1902, corresponding to the 28th day of the 8th month of the 35th year of Meiji.

(Signed) CLAUDE M. MACDONALD.
JUTARO KOMURA.

*Decision of the Permanent Court of Arbitration in the matter of
perpetual leases, May 22, 1905*

Whereas, according to the protocols signed at Tokyo on August 28, 1902, a disagreement has arisen between the Government of Japan on the one hand and the Governments of Germany, France, and Great Britain on the other regarding the real meaning and scope of the following provisions of the respective treaties and other agreements existing between them, namely:

Paragraph 4 of Article XVIII of the treaty of commerce and navigation of April 4, 1906, between Japan and Germany: "As soon as this embodiment takes place" (that is to say, when the various foreign quarters existing in Japan have been incorporated into the respective communes of Japan), "the existing leases, unlimited as to time, under which real estate is now held in the said settlements, shall be ratified, and no other conditions of any kind shall be imposed with regard to these pieces of real estate than are contained in the existing leases;" and section 3 of the additional communication of the same date from the Secretary of State for Foreign Affairs of the German Empire to the Minister of Japan at Berlin: "3. That, inasmuch as the Japanese Government retains the ownership of the parcels of real estate mentioned in

Article XVIII of the treaty, the holders or their legal successors shall have no taxes of any kind to pay outside of the real estate tax stipulated in the contract;" and the following paragraph of the reply of the Japanese Minister under even date to the foregoing communication: "That the presumptions expressed therein under numbers 1 to 4 with regard to the acquisition of property rights to real estate, the erection of warehouses, the exemption from taxation of real estate in the foreign settlements, and the preservation of duly acquired rights after the expiration of the treaty, are correct in every respect."

Paragraph 4 of Article XXI of the revised treaty of August 4, 1896, between Japan and France: "When the above mentioned changes have taken place" (that is to say, when the various foreign settlements existing in Japan have been embodied into the respective Japanese communes, thereafter forming a part of the municipal system of Japan; and when the competent Japanese authorities have assumed all the municipal obligations and duties, and the municipal lands and property belonging to these settlements have been transferred to said authorities), "the perpetual leases by virtue of which foreigners now possess property in these quarters shall be confirmed, and property of this nature shall not give rise to any imposts, taxes, charges, contributions, or conditions whatsoever other than those expressly stipulated in the leases in question."

Paragraph 4 of Article XVIII of the revised treaty of July 16, 1894, between Japan and Great Britain: "When such incorporation takes place" (that is, when the various foreign quarters existing in Japan shall have been incorporated into the respective communes of Japan), "existing leases in perpetuity under which property is now held in the said settlements shall be confirmed, and no conditions whatsoever other than those contained in such existing leases shall be imposed in respect of such property."

Whereas the powers at variance have agreed to submit their difference to the decision of a court of arbitration, and in virtue of the above-mentioned protocols the Governments of Germany, France, and Great Britain have designated as arbitrator Mr. Lewis Renault, Minister Plenipotentiary, member of the Institute of France, professor in the faculty at Paris, jurisconsult of the Department of Foreign Affairs, and the Government of Japan has designated as arbitrator His Excellency Mr. Itchiro Motono, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the Emperor of Japan at Paris, Doctor of Laws.

And whereas the two above-mentioned arbitrators have chosen as

umpire Mr. Gregers Gram, former Minister of State of Norway, Provincial Governor.

And whereas the court thus composed has as its mission to decide, in the last resort, on the following question :

Do the provisions of the treaties and other engagements herein above mentioned exempt only the lands held by virtue of the perpetual leases granted by the Japanese Government or in its name, or do they exempt the lands and the buildings of every nature constructed or which may be constructed on these lands, from all imposts, taxes, charges, contributions, or conditions whatsoever other than those especially stipulated in the leases in question?

Whereas the Japanese Government maintains that the lands alone are exempt from the payment of imposts and other charges to the extent which has just been indicated.

And whereas the Governments of Germany, France, and Great Britain claim, on the contrary, that the buildings constructed on these lands enjoy the same exemption.

And whereas, in order to understand the nature and the scope of the engagements contracted on both sides through the perpetual leases it is necessary to examine several arrangements and agreements concluded, under the old treaties, between the Japanese authorities and the representatives of several powers.

And whereas from these acts and stipulations inserted in the leases it is shown :

That the Japanese Government had consented to lend its assistance for the creation of foreign quarters in certain cities and ports of Japan, open to the citizens of other nations.

That on the lands designated for the use of the foreigners in the various localities the Japanese Government has executed, at its own expense, works for the purpose of facilitating their urban occupation.

That as foreigners are not allowed to acquire ownership of lands situated in the country according to the principles of Japanese law, the Government has given them a perpetual lease on the lands.

That the leases determine the extent of the lots leased and stipulate a fixed annual rent, calculated in proportion to the area leased.

That it was agreed that in principle the foreign quarters should remain outside the municipal system of Japan, but that they were not subjected to a uniform organization.

That it was decided, by means of regulations, how the various adminis-

trative functions should be provided for, and that it was prescribed that the holders of the lands should be obliged to contribute partially toward the expenses of the municipality by means of dues the amount and mode of collection of which were determined.

And whereas it would be easy to explain the care taken in wording these documents in order to define the obligations of every nature incumbent on foreigners toward the Japanese Government, if it were understood that the annual rent represented not only the price of the lease but also the counterpart of the imposts which the lessees would have been owing by reason of the situation created in their favor by the leases, and that, consequently, they would not, in this capacity, have to bear any imposts and charges but those expressly mentioned in the said leases.

And whereas, moreover, it is not denied that this is the real meaning of this document, as far as lands are concerned, but the Japanese Government alleges that the leases referred only to the bare lands and does not admit that the buildings erected on the lands shall be comprised in the stipulations on which the exemption from taxes would be based.

And whereas it alleged that the lands alone belonged to the Government, the buildings being, on the contrary, the property of the lessees and that in consequence the immunity in question can only extend to the real estate which had never been separated from the Government domain; and whereas, nevertheless, the question to be decided is whether, from the Government's point of view, the buildings erected on the leased lands were, by mutual consent, considered as accessories of these lands or not, and the solution of this question does not depend on distinctions drawn from a pretended difference with regard to the ownership of the real estate.

And whereas the court can therefore not stop to take up the discussion begun on this subject and based on the principles of civil law.

And whereas the lands were leased for the purpose of building houses on them, as is shown at once by the situation of the lands and the nature of the improvements made thereon by the Japanese Government.

And whereas the obligation to erect buildings was imposed in some localities under penalty of forfeiture, and the leases often contained a clause according to which the buildings situated on the lands should become the property of the Japanese Government in case the lessee failed to fulfill his engagements.

And whereas it must be admitted that the circumstances just related offer arguments in refutation of the claim that the soil and the buildings

constitute entirely different objects from the Government's standpoint in the relations between the parties.

And whereas in concluding these acts the Japanese Government acted not only as owner of the lands leased but also in its capacity as the sovereign power of the country.

And whereas the will of the parties was consequently the law in the matter, and, in order to determine how the acts were really interpreted we must examine the treatment to which the holders of the lands have actually been subjected in the various localities as far as the taxes are concerned.

And whereas, in this regard, it is known that, according to a practice which has never varied and has been in existence for a long number of years, not only the lands in question but also the buildings erected thereon have been exempt from all taxes, imposts, charges, contributions, or conditions other than those expressly stipulated in the perpetual leases.

And whereas the Government of Japan maintains, to be sure, that this state of affairs, as well as the fiscal immunity which was enjoyed by foreigners in general in that country, was due only to the circumstance that the consular courts refused to give the necessary sanction to the fiscal laws of the country.

Whereas, however, this claim is unsustained by evidence and it is not even alleged that the Japanese Government ever made any reservations with respect to the German, French, and British Governments for the purpose of maintaining the rights which it says were violated.

And whereas, although it has been alleged that the immunity enjoyed by foreigners with respect to taxes under the old treaties was general and extended to foreigners residing outside the concession in question, it is nevertheless shown from information furnished on the subject of the holders of real estate (lands and houses) at Hiogo that the said rule was not universally applied.

And whereas, at all events, the actual situation is not doubtful, however it is explained.

And whereas, from the standpoint of the interpretation of the provisions of the new treaties with regard to which there is a dispute among the parties:

The editing of Article XVIII of the treaty between Great Britain and Japan (which treaty was previous to the two others) had been preceded by propositions to place foreigners holding lands on the same footing as Japanese subjects, both from the standpoint of the ownership of real

estate which had been granted them on lease and in regard to the payment of taxes and imposts, but it was afterwards agreed upon to continue the system which had prevailed until then.

And the Japanese Government claims, to be sure, that the question of maintaining the *status quo* referred only to the lands, but this claim is not substantiated by the expressions employed during the course of negotiations.

And, on the contrary, the representative of the Japanese Government who took the initiative in order to reach an agreement along these lines confined himself to proposing the maintenance of the *status quo* in the foreign settlements.

And it is not to be presumed that the delegate of Great Britain, in presenting a project worked out on the basis of said proposition, intended to make a restriction with regard to the buildings, which is neither shown by the words inserted in the record nor by the purport of the article proposed by him.

And, in order to maintain the *status quo* integrally, it would not be sufficient to admit that the fiscal immunity, which up to that time had extended to both lands and buildings in the foreign settlement, should be maintained with regard to the soil only and that it should cease to exist as far as the houses are concerned.

And this must especially be the case if we consider that, in order to conform to what had been agreed upon, the parties did not confine themselves to drawing up a provision with regard to the confirmation of the leases, but added that no conditions whatsoever other than those contained in such existing leases shall be imposed with respect to such property.

And this latter clause is worded still more explicitly in the treaty with France.

And whereas, moreover, the Powers did not speak of lands in the clauses in question as they must necessarily have done if the immunity, contrary to what had been practiced up to that time, ought to have been confined to the lands.

And whereas, on the contrary, they employed expressions which were broad enough to comprise the entire situation created by the leases for the lessees.

And whereas the court can not, either, admit that the notes exchanged between the German and Japanese Governments at the time of conclusion of the new treaty contained explanations of such a nature as to place Germany in any less favorable situation than the other two Powers.

And whereas the Japanese Government has desired above all to derive an argument from the fact that the German Government based fiscal immunity on the fact that foreigners are prohibited from acquiring ownership to lands situated in Japan, but it is necessary in this regard to consider that the buildings had really always had the character of appurtenances of the lands from the standpoint of taxes, and it can not be presumed that the German Government intended to renounce the advantages allowed in favor of Great Britain by the new treaty, which would moreover be in contradiction with the clause assuring to Germany the treatment of the most-favored nation.

Therefore, the Court of Arbitration, by majority of votes, decides and declares:

The provisions of the treaties and other engagements mentioned in the arbitration protocols not only exempt the lands held by virtue of the perpetual leases granted by the Japanese Government or in its name, but they exempt the lands and the buildings of every nature constructed or which may be constructed on these lands from all imposts, taxes, charges, contributions, or conditions whatsoever other than those expressly stipulated in the leases in question.

Done at The Hague, in the building of the Permanent Court of Arbitration, on May 22, 1905.

(Signed) G. GRAM.
L. RENAULT.

At the time of proceeding to the signature of the present award, availing myself of the privilege conferred by Article LII, paragraph 2, of the convention for the peaceful settlement of international disputes, concluded at The Hague on July 29, 1899, I wish to state my absolute disagreement with the majority of the court with regard to both the grounds and the decision of the award.

(Signed) I. MOTONO.

GREAT BRITAIN V. FRANCE

Agreement between Great Britain and France referring to arbitration the right of certain Muscat dhows to fly the French flag

[Signed at London, October 13, 1904.]

Whereas the Government of His Britannic Majesty and that of the French Republic have thought it right, by the declaration of the 10th March, 1862, "to engage reciprocally to respect the independence" of His Highness the Sultan of Muscat;